

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

David Oppenheimer,

Plaintiff,

V.

Michael C. Scarafile, Patricia R. Scarafile,
Sheila Glover Romanosky, and
O'Shaughnessy Real Estate, Inc., d/b/a
Carolina One Real Estate,

Defendants.

CASE NO: 2:19-cv-3590-BHH

**Defendants' Memorandum of Law in
Support of First Motion to Compel
Exhibit # 1**

EXHIBIT # 1

Dana Andrew LeJune ATTORNEY AT LAW

Board-Certified, Civil Trial Law, Texas Board of Legal Specialization

Houston Office

6525 Washington Avenue, Suite 300
Houston, TX 77007-2112
tel 713.942.9898
www.triallawyers.net
www.copyrightsuit.net

Asheville Office

7 Orchard Street, Suite 200
Asheville, NC 28801-2574
tel 828.774.5800
dlejune@triallawyers.net

June 24, 2019

Patricia R. Scarafile
Michael C. Scarafile
O'Shaughnessy Real Estate Inc.
D/B/A CAROLINA ONE REAL ESATE
4024 Salt Pointe Parkway
North Charleston, South Carolina 29405

RE: Client: David Oppenheimer/Performance Impressions
Matter: Infringement(s) of Copyrighted Photograph by O'Shaughnessey Real Estate
Inc., d/b/a Carolina One Real Estate

Dear Scarafiles:

The undersigned represents David Oppenheimer with respect to copyright matters, including your (plural) direct and continuing infringements of his two (2) copyright-protected works shown below:¹



¹ Both of these images are protected by copyright registration number VAu 1-142-190, entitled "Travel, Festival, and Concert Photography by David Oppenheimer 2013." See Exhibit 1.

Patricia R. Scarafile
Michael C. Scarafile
O'Shaughnessy Real Estate Inc.
June 24, 2019



It appears from the website's Metadata that since at least November 8, 2016, the images have been displayed at/in/on the 34 URLs listed on the attachment to this letter (Exhibit 2).

In addition to violating the Copyright Act, you (plural) violated the Digital Millennium Copyright Act by removing or obscuring (cropping) Mr. Oppenheimer's copyright management information from the photos, and from the Metadata within the images.

This letter is Mr. Oppenheimer's demand that you (plural) *immediately*:

1. **Cease and desist from all further dissemination** and/or distribution of these works *and all other works* of Mr. Oppenheimer, and provide proof of same to the undersigned;

Patricia R. Scarafile
Michael C. Scarafile
O'Shaughnessy Real Estate Inc.
June 24, 2019

2. **Tender to the undersigned an audited accounting** of the revenue received by you (plural) from the sale of the property;
3. **Lockdown and protect all Electronically-Stored Information**, including email, as described in the attached "Notice Concerning Retention of Potentially Relevant Documents;"
4. **Buy back or otherwise withdraw** all distributed copies of everything bearing the protected images;
5. **Return all remaining copies** in your possession and constructive possession; all tangible representations, all magnetically or optically-stored data bearing and/or storing respectively the copyrighted images, *and any others* of Mr. Oppenheimer's, etc.;²
6. **Tender to the undersigned a sworn itemization** of all uses of the works, *as well as any others* of Mr. Oppenheimer;
7. **Produce to the undersigned** a copy of each and every brochure, flier, and all other tangible advertising bearing the images, and provide same to the undersigned for destruction; *and*
8. **Immediately inform the relevant Commercial General Liability Insurance Carriers of this claim** (copyright infringement claims of this type are covered under Coverage B, the "advertising injury" portion of most Comprehensive General Liability Insurance Policies).

Please forward correspondence to the undersigned within ten (10) days of receipt of this letter indicating your intentions in these regards. **Absent actual receipt by the undersigned of such correspondence within the ten days, no further settlement negotiations will be undertaken.**

² However, **do not destroy any prints or digital evidence** (including but not limited to images, email, email attachments, mockups, memos or other relevant or potentially relevant paper or digital data) from any of your servers, backup servers/cloud storage, desktops, laptops or smart phones. Doing so is *spoliation of evidence*, as described in the enclosed Notice Concerning Retention of Potentially Relevant Documents (**See Exhibit 3, attached**). **Instead, please immediately advise your client to initiate a "lockdown" of all such locations** where relevant data might reside, to prevent intentional or negligent destruction of evidence (most counsel advise clients to "mirror" all servers and hard drives).

Patricia R. Scarafile
Michael C. Scarafile
O'Shaughnessy Real Estate Inc.
June 24, 2019

Do not communicate directly with Mr. Oppenheimer about this matter, as doing so will be construed tortious interference with the attorney-client relationship. Rather, if you, your attorney, and/or your insurance carrier or adjuster have questions or comments, please direct them to the undersigned, using the mail, email address, or phone number in the letterhead, on weekdays, during regular business hours.

Very truly yours,



Dana LeJune

DL/pkt

Encl: Spoliation Warning
Copyright Certificate

Copies: mscarafile@yahoo.com
mscarafile@aol.com
mcs@carolinaone.com
pscarafile@carolinaone.com
p.scarafile@carolinaone.com
patricia.scarafile@prudentialcarolina.com
pscarafile@yahoo.com
patriciascarafile7283@yahoo.com